

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:	)	CSR 6572-E
	)	CSR 6573-E
Comcast Cable Communications, LLC, On Behalf	)	CSR 6574-E
of its Subsidiaries and Affiliates	)	CSR 6575-E
	)	CSR 6576-E
Petition for Determination of Effective	)	CSR 6577-E
Competition in forty-two California Franchise	)	CSR 6578-E
Areas	)	CSR 6579-E
	)	CSR 6580-E
	)	CSR 6581-E
	)	CSR 6582-E
	)	CSR 6583-E
	)	CSR 6584-E

MEMORANDUM OPINION AND ORDER

Adopted: January 22, 2007

Released: January 24, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Comcast Cable Communications, LLC has filed several petitions with the Commission for determination of effective competition in 42 Southern California franchise areas (the “Franchise Areas”)¹

¹ See Comcast Petition, Exhibit 1 at 1-3 (requesting that the Commission find effective competition in Artesia (CA1294), Bell (CA1222), Bell Gardens (CA0920), Bellflower (CA1451), Canyon Lake (CA1626); California Oaks (CA1288), Carson (CA0439), Claremont (CA1224), Compton (CA1126), Corona (CA0805 and CA1199), Costa Mesa (CA1173 and CA1602), Covina (CA0806), Cudahy (CA1223), Culver City (CA0807), Cypress (CA1203), Downey (CA 0917), Hawaiian Gardens (CA1127), Inglewood (CA0531), La Mirada (CA0853), La Palma (CA1320), Lake Elsinore (CA0495), Lakewood (CA1011), Lomita (CA1137), LA – Area B (Sylmar, CA0188), LA Area D (Los Angeles, CA0219), LA--Area J (Playa Del Rey, CA0774; Westchester, CA0775; Hawthorne, CA1163; Windsor Hills, CA1169; Los Angeles, CA1601), LA--Area M (Wilmington, CA1100; San Pedro CA1101; Harbor City, CA1102), LA County--Claremont (CA1346), LA County--Covina (CA1601), LA County-Kagel(CA0131), LA County-Newhall Saugus (Valencia, CA0177; Newhall, CA026; Suagus, CA1613, LA County-South (Baldwin Hills; CA0937; Ladera Heights, CA0938; Lennox, CA0939; Athens, CA1264; Firestone, CA1265; Florence, CA1266; Willow Brook, CA1268; Los Angeles, CA1175, CA1267, CA1430), Lynwood (CA0919), Maywood (CA0809), Orange (CA1627), Paramount (CA0918), Pomona (CA0810), Riverside County (Riverside, CA0699; The Farm, CA0867; El Cerrito, CA1238; Menifee, CA1289; Nuevo, CA1290; Riverside, CA1303; Homeland, CA1620; Horse Thief Canyon, CA1621; Santa Barbra County (Santa Barbara, CA0157; Santa Ynez Valley, CA0158; Orcutt, CA0454; Vandenberg Village, CA1635) Santa Clarita (CA1630), Santa Fe Springs (CA0922), South El Monte (CA1120), and Tustin (CA0811).

pursuant to Section 623(a) of the Communications Act² and the Commission's implementing rules.³ Comcast alleges that its cable systems serving 40 Franchise Areas are subject to effective competition under the “competing provider” test set forth in Section 623(1)(1)(B) and, therefore, are exempt from cable rate regulation. In addition, Comcast alleges that there is effective competition in two other Franchise Areas under the “low penetration” test set forth in Section 623(1)(1)(A). Specifically, Comcast claims that the competing provider effective competition present in these Franchise Areas arises from the competing services provided by two unaffiliated direct broadcast satellite (“DBS”) providers, DirecTV, Inc. and EchoStar Satellite, L.L.C. The City of Los Angeles has filed oppositions; Comcast has filed replies.

II. DISCUSSION

2. Pursuant to Section 623(1) of the Act and Section 76.905 of the Commission's rules,⁴ it is presumed that cable systems do not face effective competition absent evidence to the contrary.⁵ Consequently, the cable operator bears the burden of rebutting the presumption that effective competition does not exist by producing evidence that shows effective competition is present within the relevant franchise areas.⁶

A. Competing Provider Effective Competition

3. Section 623(1)(1)(B) of the Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”), each of which offer comparable programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds fifteen percent of the households in the franchise area.⁷

4. Comcast submitted as evidence of effective competition a Satellite Broadcasting and Communications Association (“SBCA”) Effective Competition Tracking Report for the Franchise Areas reflecting the number of DBS subscribers within the zip codes associated with the cable communities.⁸ The data provided by Comcast indicates that DBS penetration ranges from 17.94 percent in Hawaiian Gardens City to 64.95 percent in Canyon Lake City.⁹ The City of Los Angeles (“the City”) has filed an opposition to Comcast’s petition for special relief in Franchise Areas B, D, J, and M. First, the City argues that Comcast cannot discharge its burden of showing effective competition by a showing of only DBS penetration data.¹⁰ The City objects to this approach, noting that: (1) finding effective competition based only on the production of DBS penetration data would be “constitutionally infirm and contrary to the intent of the statute;” and (2) “accepting DBS penetration data from a private entity would constitute an unlawful

²47 U.S.C. § 543(a).

³47 C.F.R. § 76.905(b).

⁴See 47 U.S.C. § 543(1); 47 C.F.R. § 76.905.

⁵47 C.F.R. § 76.906.

⁶See 47 C.F.R. §§ 76.906 & 76.907.

⁷47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁸See Comcast Petition at 5.

⁹See Comcast Exhibit 7.

¹⁰Los Angeles Opposition at 3.

delegation of the Commission's authority to de-certify a local franchising authority.”¹¹

5. The City argues that the allocation method used by Comcast's SBCA report is “inherently unreliable.”¹² The City asserts that the Commission should disregard the SBCA data because: (1) Comcast relies solely on this “frail and inaccurate” information; (2) the Commission has never examined the method SBCA uses to collect its data, (3) the inaccuracy of the data provided by SBCA has not been quantified even though it is apparent, and (4) the Commission has failed to consider “whether the purpose for which the SBCA data is gathered is relevant to how cable operators use the information in effective competition proceedings.”¹³ Instead, the Commission should consider relevant information supplied by the LFA's to qualify the cable operator's conclusions, such as the increase in residential growth and the number of multiple dwelling unit subscribers who cannot “see” the satellite transmitters.¹⁴ According to the City, relying solely on SBCA data creates a financial burden for LFAs because they must obtain their own SBCA information or conduct independent investigations to oppose an effective competition filing; thus, shifting the burden of proof from the cable operator to the LFA in contravention of the Act.¹⁵

6. The City additionally argues that Comcast's methodology of using a five-digit zip code to calculate DBS penetration in each franchise area lacks precision since the calculation only provides an approximation of how many households subscribe to DBS service.¹⁶ Instead, the SBCA “Zip-plus-4” data should be used because of its greater accuracy.¹⁷ When using the “Zip-plus-4” data, the City found that Comcast's allocation formula overestimated the DBS penetration rate in the franchise areas (*i.e.*, Comcast determined there was a DBS penetration rate of 22.59 percent in Franchise Area B using the five digit zip codes, while the City found that the penetration rate was only 15.29 percent using the zip-plus-4 method).¹⁸

Although the 15 percent penetration rate is still met, the City argues that such a close margin should be analyzed in greater detail for possible error.¹⁹ The City claims it needs more time to carefully review these discrepancies, and that Comcast's data should not be used in effective competition proceedings because of these errors.²⁰

7. The City states that relying on the SBCA data as conclusive, essentially “delegates to a private entity the regulatory task of determining the facts on which the City's authority depends.”²¹ The City argues that the Commission cannot delegate its authority to a private entity without Congressional authorization.²² This delegation of private authority is unlawful since neither the statutory definition of

¹¹ *Id.*

¹² *Id.* at 4.

¹³ *Id.* at 4, 5.

¹⁴ *Id.* at 4-5, 5-6.

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 8.

¹⁷ *Id.*

¹⁸ *Id.* at 9-10.

¹⁹ *Id.* at 10.

²⁰ *Id.*

²¹ *Id.* at 11.

²² *Id.*

effective competition nor any other provision of the Act specifies that the Commission may rely on a private entity's data to decertify an LFA.²³ The City argues that the Commission's unchallenged acceptance of SBCA data is unsound and improper because there has been no "general public participation in the full range of data collection and data accuracy issues."²⁴ The City advocates that the Commission should require the use of Zip-plus-4 data, which is more accurate and indicates significantly lower DBS penetration rates.²⁵

8. The City posits that the 15 percent penetration by DBS providers does not truly represent effective competition in the marketplace.²⁶ Although the City recognizes Congress's reliance on competition decreasing prices for these services, the City argues that the video services provided by the DBS providers do not provide adequate competition to keep cable rates low.²⁷ One reason for the lack of competition is that "in the subscribers' eyes, [the providers] do not offer 'comparable video programming.'"²⁸ Thus, the City argues that DBS is not equivalent to wireline video competition in terms of controlling unreasonable basic cable rates because there is disparity between cable rates in DBS-only competitive areas and those in areas with wireline competition.²⁹ In addition, the City argues that Comcast does not provide similar programming as DBS providers.³⁰ Because the basic tier is no longer regulated, the City contends that channels in the basic tier should not be used to determine if the providers share comparable programming. The City also argues that the Commission cannot assume that DBS competition offers comparable video programming because the basic tier in Los Angeles has PEG access channels which are not provided by DBS providers.³¹

9. We reject the City's arguments for the following reasons. First, there is substantial evidence on the record to satisfy the first prong of the competing provider test. The City does not dispute that the relevant Franchise Areas are served by at least two unaffiliated MVPDs. Nor has the City demonstrated that less than 50 percent of the households in the area are able to receive comparable programming. The City argues that because "nearly 50 percent of the households in Franchise Area B reside in MDUs," the service is not available to all possible consumers in the franchise area due to lack of reception.³² However, the City fails to show that these households cannot obtain DBS service or that the "nearly 50 percent" of the households equates to more than 50 percent of the households in the entire franchise area. The DBS service of DirecTV, Inc. ("DirecTV") and DISH Network ("DISH") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.³³ The two DBS providers' subscriber growth reached approximately 26.1 million as of June, 2005, comprising

²³ *Id.* at 11-12.

²⁴ *Id.* at 13.

²⁵ *Id.*

²⁶ *Id.* at 14.

²⁷ *Id.*

²⁸ *Id.* at 15.

²⁹ *Id.* at 15-16.

³⁰ *Id.*

³¹ *Id.*

³² Los Angeles Opposition at 7.

³³ See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH has become the third largest, MVPD provider.³⁴ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in the communities at issue are DBS subscribers, we conclude that the population of the communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.³⁵ We further find that Comcast has demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area.³⁶ Comcast has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and DISH.³⁷ Therefore, the first prong of the competing provider test is satisfied.

10. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceeds 15 percent of the households in a franchise area.³⁸ As noted above, Comcast has purchased a SBCA Effective Competition Tracking Report for the Franchise Areas reflecting the number of DBS subscribers within the zip codes associated with the cable communities.³⁹ The SBCA report submitted by Comcast indicates that DBS penetration ranges from 17.94 percent in Hawaiian Gardens City to 64.95 percent in Canyon Lake City.⁴⁰

11. The City argues that Comcast's methodology of using a five-digit zip code to calculate DBS penetration in each franchise area is improper for three reasons: 1) the calculation lacks precision because five-digit zip codes cover broad geographical boundaries that may not be congruent to the franchise areas' boundaries,⁴¹ 2) the Commission is in effect delegating its authority to a private party,⁴² and 3) the burden of proof has been placed upon the City, rather than Comcast, because of the City's necessity to conduct its own research since the only other outside source is SBCA (the City states that it does not have the time or the funding to accomplish such an endeavor).⁴³

³⁴ *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73 (rel. March 3, 2006).

³⁵ See 47 C.F.R. § 76.905(g).

³⁶ Cablevision Petition at 4, 13 and Exhibits 4 & 5.

³⁷ *Id.* at 4, 12 and Exhibits 1 & 2.

³⁸ 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

³⁹ See Comcast Petition at 5.

⁴⁰ See Comcast Exhibit 7.

⁴¹ See Los Angeles Opposition at 8.

⁴² See *id.* at 10-13.

⁴³ See *id.* at 7.

12. We reject the City's arguments on these issues. First, the five digit zip code allocation methodology used to calculate DBS penetration data has been used by cable operators in the past. The Commission supports, but does not at this time require, the submission of effective competition calculations using zip-plus-4 information. In this case, the City has failed to show that the recalculation of data indicates that the DBS penetration rate falls below 15 percent. In fact, the penetration rate is still above 15 percent and leaves a sufficient margin of error for the Commission to conclude that the statutory requirement of a DBS penetration rate of 15 percent or more exists.

13. Moreover, the Commission does not delegate its authority to SBCA, but has approved SBCA's methodology for arriving at its conclusions in many other similar circumstances.⁴⁴ The Commission is able to review the data presented by Comcast to determine if the operator met its burden of proof. Ironically, although the City states that we cannot look to SBCA data for reliable information, the City uses SBCA's "Zip-Plus 4" data to try to rebut Comcast's burden of proof.

14. Once the petitioner meets the burden of proving that effective competition exists, then the opposition has the opportunity to respond. By allowing Comcast to use SBCA data, the Commission is not shifting the burden of proof to the City; however, once Comcast has satisfied its burden of proof, the City can no longer simply rely on the presumption of no effective competition. While the Commission understands that filing an opposition can be a time-consuming and costly endeavor, such a requirement does not imply that the petitioner's filing is viewed with deference. Comcast has provided sufficient evidence that, under the statutory standard established by Congress, effective competition exists. Therefore, Comcast's petition is granted for the 40 Franchise Areas under the competing provider test.

B. Low Penetration Effective Competition

15. Section 623(1)(1)(A) of the Act provides that a cable system will be deemed subject to effective competition if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system." Comcast has met its burden in proving that its penetration rate in two Franchise Areas, Newhall Saugus and Riverside County, are below 30 percent, (9.01 percent and 14.36 percent), respectively. The City raises many of the same arguments, enumerated above, with regard to these calculations. We find these arguments equally unavailing in this context. The Commission, consequently, finds that the City was unable to rebut Comcast's evidence of low penetration effective competition. Therefore, Comcast's petition is granted for the two corresponding Franchise Areas.

⁴⁴ See e.g., *Charter Communications Inc.*, 19 FCC Rcd 6878 (MB 2004); *Texas Cable Partners, L.P.*, 19 FCC Rcd 6213 (MB 2004); *Amzak Cable Midwest, Inc.*, 19 FCC Rcd 6208 (MB 2004).

III. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that the Petitions for determinations of effective competition in the California Franchise Areas, as set forth in Attachment A, filed by Comcast Cable Communications, LLC **ARE GRANTED**.

17. The certifications of the forty-two Franchise Areas to regulate basic cable rates **ARE REVOKED**.

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

ATTACHMENT A

File No. CSR 6572-E
File No. CSR 6573-E
File No. CSR 6574-E
File No. CSR 6575-E
File No. CSR 6576-E
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File No. CSR 6583-E
File No. CSR 6584-E

FRANCHISE AREAS SERVED BY
Comcast Cable Communications, LLC

Franchise Area	2000 Census Household⁴⁵	DBS Subs Allocated	CPR: DBS Penetration Rate
Artesia	4,470	1,336	29.89%
Bell	8,918	2,059	23.08%
Bell Gardens	9,466	2,184	23.08%
Bellflower	23,367	5,744	24.58%
Canyon Lake	3,643	2,366	64.95%
Carson	24,648	7,865	31.91%
Claremont	11,281	4,635	41.09%
Compton	22,327	5,261	23.57%
Corona	37,839	18,213	48.13%
Costa Mesa	39,206	10,580	26.99%
Covina	15,971	6,158	38.56%
Cudahy	5,419	1,207	22.27%
Culver	16,611	3,919	23.59%
Cypress	15,654	4,703	30.04%
Downey	33,989	8,626	25.38%
Hawaiian Gardens	3,507	619	17.94%
Inglewood	36,805	8,706	23.66%
La Mirada	14,580	4,988	34.21%
La Palma	4,979	1,693	34.01%
Lake Elsinore	8,817	5,016	56.89%
Lakewood	26,853	9,615	35.81%
Lomita	8,015	2,358	29.42%
LA City- Area B	11,806	2,667	22.59%
LA City- Area D	28,645	5,866	20.48%

LA City- Area J	22,230	5,966	26.84%
LA City- Area M	39,243	8,723	22.23%
LA County- Claremont	149	62	41.80%
LA County- Covina	5,239	2,045	39.03%
LA County- Kagel Canyon	337	79	23.37
**LA County- Newhall Saugus	63,276	5,699	9.01%
LA County- South	51,169	13,709	26.79%
Lynwood	14,395	3,142	21.83%
Maywood	6,469	1,319	20.39%
Orange County	7,991	2,097	26.24%
Paramount	13,972	2,947	21.09%
Pomona	37,885	12,392	32.17%
**Riverside County	69,480	9,974	14.36%
Santa Barbara County	21,814	6,479	29.70%
Santa Clarita	50,787	16,275	32.05%
Santa Fe Springs	4,834	1,546	31.99%
South El Monte	4,620	1,054	22.82%
Tustin	23,831	5,341	22.41%

** Effective Competition under Section 623(1)(1)(A) of the Act: “fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system.”